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[APPELLATE CIVIL JURISDICTION]

POYSER, C.J. (F.M.S.), TERRELL, Ag. C.J. (S.S.) & GORDON-SMITH, Ag. J.A.

June 24, 1940.

LIM HYE CHUA

(Appellant)

v.

LIM SEE KIAT

(Respondent).

[SINGAPORE CIVIL APPEAL No. 8 of 1940]

Appeal on question of fact—Position of Court of Appeal.

When a trial Judge in his judgment specifically states that he does not base his conclusions on the demeanour of the witnesses in the witness-box and when he merely bases his decision on the probability of the truth of the story told by the Plaintiff, the Court of Appeal is in as good a position as the trial Judge to decide the issues of fact involved and may differ from the conclusions of the trial Judge on questions of fact.

Govind Prasad & Others v. Kunwarani Bala Kunwar & Others(1) followed.

Cases referred to:—

(1) *Govind Prasad & Ors.* v. *Kunwarani Bala,* A.I.R. 1934 (P.C.) 12.

(2) *Powell & Wife* v. *Streatham Manor Nursing Home,* (1935) A.C. 243.

APPEAL.

Roland St. John Braddell and S. G. Pillay for appellant.

E. M. Tampoe-Phillips for Respondent.

The facts and arguments sufficient appear from the judgments.

Cur. Adv. Vult.

Poyser, C.J., F.M.S.—The only question to be determined in this case was one of fact; viz: was the plaintiff the natural or adopted son of Lim Ho Swa alias Lim Soo Chua who died intestate in China about August 1915. The trial Judge found as a fact that the plaintiff was a natural son of the above deceased.

I am fully aware of the principles which should guide an appellate Court in hearing an appeal from the decision of a judge sitting without a jury where the matter in question is one of fact. Such principles are fully enunciated in the case of *Powell & wife v. Streatham Manor Nursing Home*(2). In this case, however, the trial Judge did not base his conclusions on the demeanour of the witnesses in the witness-box —he specifically stated in his judgment that he did not do so, and added that in his opinion "it is almost impossible for a European to derive much assistance on that ground from watching the face of an oriental unless there is something more than usual upsetting in the whole case".

As the trial Judge, therefore, based his decision on the probabilities of the truth of the story told by the plaintiff, which probabilities, he considered, were definitely in favour of the plaintiff, this Court is in as good a position as the trial Judge to judge of the matter—(see *Govind Prasad & Ors. v. Kunwarani Bala Kunwar & Ors.*(1)). In my opinion, all the probabilities in the case point to the plaintiff's claim being a false one.

I would refer to the following evidence, Exhibit '3', a statement made by Lim See How, a brother of the plaintiff, to the police in consequence of a complaint laid by the defendant. In this statement Lim See How admitted going to the defendant's house in consequence of a dispute in connection with some shares, but stated more than once that the complainant (the defendant) 'is a brother of my adopted father'.

Leslie Blakesley, a police Inspector, proved the making of this statement, and that the words 'adopted father' were used. Eng Yong Khoon, a detective interpreter, gave similar evidence; he interpreted Lim See How's statement from Tiochiu to Malay. There was not the slightest attempt to suggest in cross-examination that the evidence of Blakesley or Yong Khoon was prejudiced, or that there was any reason for their giving false evidence, but the trial Judge was suspicious of their evidence, and in the course of his judgment stated:—

> "I think then that possibly the thing in this case that makes me most suspicious of the defendant's **bona fides** is the report produced by Inspector Blakesley. I feel quite certain in my own mind that what is recorded there is not what the deponent said. He would have been an absolute fool if, in all the circumstances of the case, he had said what he is represented as saying."

I do not consider that it is improbable that Lim See How would state that he was an adopted son. He was telling the police how the quarrel arose between himself and the defendant, and it seems to

me highly probable that he would inform the police of his status. Further, it is highly improbable, in my opinion, that Yong Khoon the detective, who is in no way connected with the parties, should for no apparent reason give false evidence.

I also think the trial Judge misdirected himself in holding that Lee Wee Nam's evidence took the case no further. This witness admittedly occupies a prominent position in the Chinese community, is the managing director of the Sze Hai Tong Bank, and a disinterested witness. He comes from the same village in China as Lim Ho Swa, applied for Letters of Administration to his estate at the request of his widow Lee Sai Choo, and was granted a power of attorney for that purpose. He stated that he specifically asked Lee Sai Choo if she had any children, and she told him she had not.

The trial Judge considered that this statement of Lee Sai Choo, if it had been made under 'neutral' circumstances, would have carried weight, but that she had an interest in representing to Lee Wee Nam that she had no children, as she would become entitled to the whole of the deceased's property instead of only one-third, but, as Mr. Braddell pointed out, that was incorrect, as the deceased had brothers and sisters, and that there was no evidence of fraud on her behalf, but only a vague probability.

In connection with the trial Judge's reference to the absence of adoption agreements, Mr. Braddell pointed out that there was no evidence of any custom to preserve such documents, and quoted text-books on Chinese custom which indicated that although there were adoption ceremonies, there were not necessarily adoption documents.

There is only one other matter I consider needs reference to. The trial Judge refers to the fact that the defendant did not take out Letters of Administration to his father's estate and thus deprived the Colony of revenue. It is not quite clear whether the Judge was influenced by this fact or not, but if he was, he was not justified in being so influenced, for it appears that Letters of Administration were taken out by some other person, and estate duty was duly paid.

Taking the case as a whole, I consider the probabilities are all in favour of the appellant, and I would allow the appeal with costs both here and below, and dismiss the plaintiff's action. The deposit should be paid out to the appellant's solicitors.

Terrell, Ag. C.J., S.S.—I agree.

Gordon-Smith, Ag. J.A.—I agree and have nothing to add.

Appeal allowed.

Solicitors for the Appellant—*S. G. Pillay & Co.*

Solicitor for the Respondent—*E. M. Tampoe-Phillips.*

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, Ag. J.A.

July 2, 1940.

MURUGAPPA CHETTIAR

v.

KRISHNAPPA CHETTIAR & OTHERS.

[MALACCA CIVIL SUIT No. 57 of 1938]

Foreign Judgment—Reciprocal Enforcement of Judgments Ordinance (Cap. 46)—Sec. 3 s.s. 2—Hundi—Whether negotiable.

The Courts of the Colony will refuse to enforce or give effect to a judgment obtained in a foreign Court if any of the conditions contained in Sec. 3 s.s. 2 of the Reciprocal Enforcement of Judgments Ordinance are present in the case before the Court.

Semble, that if none of these conditions are present the Court will give effect to a judgment obtained in a foreign Court.

The Court will decline to act as a Court of Appeal trying an issue as to whether the decision of a Judge of a foreign Court was correct in law.

Obiter, a judgment of a foreign Court obtained in default of appearance will not be enforced in the Courts of the Colony when the defendant at the time the suit was commenced was not a subject of nor resident in the country in which the judgment was obtained.

Also held, that a Hundi is a negotiable instrument within the meaning of the Bills of Exchange Act.

Raman Chetty v. Veerappa Chetty (1931), S.S.L.R. 30 not followed.

Firm Sadasuk Janki Das v. Sir Kishen Parsad & Another 1918 A.I.R. (P.C.) 146 followed.

Cases referred to:—

1. *Adansonia Fibre Co.,* 9 Ch. App. 635.
2. *Firm Sadasuk Janki Das v. Sir Kishen Parsad & anor.,* 1918 A.I.R. (P.C.) 146.
3. *Godard v. Gray,* 6 Q.B. Cases at p. 149.
4. *Harimohan Ghose v. Sourendra Nath Nitter & ors.,* 1925 A.I.R. (Cal.) 1153.
5. *Jacobson v. Frachon,* 1927, 44 T.L.R. 103.
6. *Johnston v. Janvivi,* 1928 A.I.R. Lahore 722.